

No. 12374

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ROBERT L. CANNON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

PETITION FOR REHEARING.

FILED

MAY 14 1950

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The petitioner respectfully requests a rehearing in the above-entitled cause and that the decision be reversed for the reasons and upon the grounds following:

That the Court in its opinion decided this case basically on the same reasoning as the case of *Richter v. United States*, decided by this Court on April 5, 1950, and immediately before the instant case. In its opinion, this Court said, "This Court . . . has decided a case to all intents and purposes like the instant one, squarely against appellant's contention on both points mentioned."

We urge the Court that this case has one very decided difference than the *Richter* case and that the difference is a very material one.

While both cases raise the question of construing the law in the light of the First Amendment, this case has the following stipulation as to the facts involved, which take the facts entirely out of the hands of the trial court. The full stipulation is found in the transcript, pages 49 and 50. The important part we quote from the statement of the Court, as follows: “. . . that the reason why the defendant did not register and has not registered under the Selective Service Act of 1948 was because of his religious beliefs and convictions.”

Consequently, it was not an issue before the trial court, nor is it an issue before this Court, whether or not the requirement of registration violated the First Amendment of the Constitution of the United States.

In this case, because of the stipulation, it is no longer an issue whether or not registration under the Selective Service Act of 1948 interferes with the exercise of appellant's religion. It has already been stipulated, and this Court is bound by such stipulation, that the action of appellant for which he is here charged was *because* of his religious beliefs and convictions.

The First Amendment of the Constitution says: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,”

The First Amendment to the Constitution is very clear. The stipulation in the case at bar is also very clear. *As to this appellant*, the requirement of registration under the Selective Service law prohibited the appellant in the free exercise of his religion.

Therefore, petitioner respectfully submits and sincerely urges that a rehearing should be had, believing that a re-examination of the record made by the Court after rehearing will result in a revision and reversal of the decision herein.

JAMES D. RANDLES,
Attorney for Appellant.

Certificate.

I, James D. Randles, do hereby certify that I am counsel for appellant in the above action and that this Petition for Rehearing is well-founded and that it is not interposed for delay.

JAMES D. RANDLES.

